Mr. M. K. Devassy *(Adur):* Do the Government realise that it is very undesirable to move this House by supplementary grants and means of that sort after accomplishing a fact which ought to have been brought before this Council in one form or other?

Mr. President: Such questions of policy do not arise at question time.

Mr. T. A. Ramachandra Ayyar *(Nellayi):* Was there any proposal to give the distributing agency to Chandrie and Co.?

Mr. P. V. Raphael *(Joint Secretary to Government):* The distributing agency has not yet been decided. That is what I said in my statement.

Mr. President: And you are not in a position to give further details. Is it not so?

Mr. P. V. Raphael *(Joint Secretary to Government):* Yes, Sir.

PORT AREA—LEVY OF TOLLS IN

88. **Mr. A. B. Salem** *(Mattancheri):* Will Government be pleased to state.—

(*a*) whether they have authorised the establishment of an out-post at the entrance of the Port area outside the walls in the vicinity of the road-bridge approach and the Mattancheri Halt Station where a collection of 8 annas is made on every car entering the port limits to go past it to the Harbour area or to the Harbour Terminus Railway Station;

(*b*) under what authority or provision of law is this levy of 8 annas on every car entering the Port area, made;

(*c*) if the levy is not made with the sanction of the Cochin Government, will the Government be pleased to state under whose authority and under what provision of law is this levy made;

(*d*) whether this levy of 8 annas is made with the sanction of the Harbour Advisory Committee and whether the levy has been publicly notified in the Cochin Government Gazette or otherwise;

(*e*) whether such levy is made in other major Ports in India where Port Trusts exist to administer their affairs;

(*f*) whether the public have a right of way on the roads within the Port area to proceed to the public offices

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and the Railway Station, and if so, how this right is curtailed by the levy of 8 annas on cars;

(*g*) whether rickshaws or other vehicles are also to pay anything for entering into the Port area roads?

Mr. P. V. Raphael *(Joint Secretary to Government):*

(*a*), (*b*), (*c*) The Port Authorities are levying a charge of 8 annas on every car that enters the working area of the Port *i.e.*, the area to the north of the Mattancheri Halt Station. This is done with the knowledge and consent of the Cochin Government. There is no specific law authorising the levy of a road charge by the Port Authorities; but steps are being taken to validate this levy by legislation.

(*d*) Yes. Copies of the notice relating to the charges to be levied on vehicles have been distributed by the Port Authorities to the local Press, the Chambers of Commerce, the Municipalities, etc.

(*e*) The practice at all the other major Ports is not known; but it is understood that the Madras Port Authorities levy license fees on vechicles using the Port area.

(*f*) The roads within the Willingdon Island belong to the Port Authorities. The public are given access to these roads, excepting those falling within the Protected areas. Government do not think that the levy of charges on vehicles by the Port Authorities tantamounts to the curtailment of any right of the people. Even on public roads belonging to the State or the Municipalities charges are levied on vehicles by way of toll.

(*g*) Yes.

Mr. A. B. Salem *(Mattancheri):* May I know, Sir, whether these charges levied on vehicles by way of toll on the public roads is not done under a law?

Mr. P. V. Raphael *(Joint Secretary to Government):* Yes, Sir.

Mr. A. B. Salem *(Mattancheri):* If so, when there is no statutory authority to levy any money from the public at large how is this countenanced and how could this be legal by a consent of the Government?

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Mr. P. V. Raphael *(Joint Secretary to Government):* Steps are being taken to validate this.

Mr. A. B. Salem *(Mattancheri):* Are you entitled to levy this charge?

Mr. P. V. Raphael *(Joint Secretary to Government):* It has been explained in this House that these roads are their private property and they have got the right.

Mr. A. B. Salem *(Mattancheri):* Then your consent or knowledge is not necessary?

Mr. P. V. Raphael *(Joint Secretary to Government):* They asked us.

Mr. A. B. Salem *(Mattancheri):* What for?

Mr. P. V. Raphael *(Joint Secretary to Government):* To give them the assent of the Cochin Government.

Mr. A. B. Salem *(Mattancheri):* Is it your case that in the Port area anything can be done by the Port Authorities?

Mr. P. V. Raphael *(Joint Secretary to Government):* We are partners in the concern. They always consult us.

Mr. A. B. Salem *(Mattancheri):* That is quite a different matter. Suppose in a private land you have got a right of way. Is the owner entitled to levy a toll?

Mr. M. Sivarama Menon *(Advocate-General):* This is not a toll. If anybody thinks it is an illegal levy the civil courts of this State are competent to decide that question. We want to legalise that by a piece of legislation which is now engaging the attention of the Government of India. Our Government have taken very prompt and early steps to provide such a piece of legislation and have forwarded it to the authorities concerned for their approval. We cannot take unilateral action in a matter like this.

Mr. A. B. Salem *(Mattancheri):* The question is, is it not within the entire jurisdiction of Cochin? Which is the other party that has to be consulted in this matter? If it is illegal, you say, the courts are competent and the civil rights can be contested there. If it is an absolute legal thing according to the Government, then where is the right to be contested?

Mr. M. Sivarama Menon *(Advocate-General):* The Government have given the information to the Hon'ble House that this levy is sought to be legalised by a piece of legislation and that early steps have been taken by the Government to prepare a draft of such a piece of legislation which is now undergoing the scrutiny of the Government of India, because this is a Major Port and even though

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the jurisdiction of the Willingdon Island remains with this State, this is a matter which concerns the Port Authority and the Imperial Government. Therefore, the Government thought it necessary that they should also scrutinise this so that objections, if any, to the provisions contained therein may be taken early enough and there may not be any amendments afterwards.

Mr. A. B. Salem *(Mattancheri):* Before the Government gave the consent did they find out whether it will be legal or illegal? What was the hurry to levy this before a law was passed?

Mr. V. J. Mathai *(Planters):* Am I to take it that the cars which go from Ernakulam straight to Mattancheri will have to pay this charge?

Mr. M. Sivarama Menon *(Advocate-General):* No.

Mr. E. Ikkanda Warriar *(Cheruthuruthi):* May I know before which legislature does the Government propose to bring this legislation? Is it for this Council to pass that legislation?

Mr. M. Sivarama Menon *(Advocate-General):* No orders have yet been passed.

Mr. A. B. Salem *(Mattancheri):* May I know where the Railway station is? Have not the people going to the Railway station to pass through this illegal levy station?

Mr. M. Sivarama Menon *(Advocate-General):* Railway station is inside the Port area.

Mr. A. B. Salem *(Mattancheri):* To go to the Railway station the public have to pass through this illegal levy post. Is the Government aware that the public have to go there?

Mr. M. Sivarama Menon *(Advocate-General):* That is inside the Port Area. The facility to approach the Railway station has been extended to the public and therefore, the Government felt that a small levy on the vehicles which make use of those roads can only be right.

Mr. M. K. Devassy *(Adur):* Is the Harbour Railway maintained by the Port?

Mr. M. Sivarama Menon *(Advocate-General):* Yes. From the point of the approach road up to the other end it is Harbour Railway.

Mr. A. B. Salem *(Mattancheri):* Is there not a Railway Act governing traffic, rates of freight, etc?

Mr. M. Sivarama Menon *(Advocate-General):* Yes.

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Mr. A. B. Salem *(Mattancheri)*: Is there any Act either by the Government of India or by the Cochin Government with regard to this road? How was this consent given without the authority of an Act? No pie can be taken from the public without a law. Was not the Government aware of this elementary principle?

Mr. M. Sivarama Menon *(Advocate-General)*: The Government have given their consent and a piece of legislation has already been drafted.

Mr. C. R. Iyyunni *(Trichur-South)*: May I know whether it is under the contemplation of the Government to pass a piece of legislation?

Mr. M. Sivarama Menon *(Advocate-General)*: Yes.

Mr. C. R. Iyyunni *(Trichur-South)*: What for?

Mr. M. Sivarama Menon *(Advocate-General)*: The roads were opened and the Harbour authorities could not wait till the legislation was passed. Therefore, by common consent it was arranged that they may collect the levy on the understanding that a piece of legislation will be passed.

Mr. A. B. Salem *(Mattancheri)*: Does the Government think that only consent was necessary to levy a toll?

Mr. M. Sivarama Menon *(Advocate-General)*: The Government must have evidently thought so.

Mr. President: It is a matter of opinion.

Mr. K. Ayyappan *(Ezhuvas-Kanayannur)*: What will be the position if some refused to give the toll?

Mr. M. Sivarama Menon *(Advocate-General)*: That is a question to be considered.

Mr. K. Kochukunhan Kaimal *(Vadakkancheri)*: Did the Government consider the propriety or legality of the proposal before the consent was given?

Mr. P. V. Raphael *(Joint Secretary to Government)*: The Government thought that it was proper for this reason. They have constructed those roads at enormous cost and they should get something in return to maintain them in proper condition.

Mr. K. Kochukunhan Kaimal *(Vadakkancheri)*: Is it because that the Authorities should be compensated for the outlay that they have invested that this levy has been imposed?

Mr. P. V. Raphael *(Joint Secretary to Government)*: It is not compensation. It is just for the purpose of road maintenance. That is why even in our Municipalities we collect tolls.

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Mr. A. B. Salem *(Mattancheri)*: The question was whether the legality or otherwise was examined before you gave your consent?

Mr. P. V. Raphael *(Joint Secretary to Government)*: The propriety of it was examined and we thought it proper to accede to their request. As for the legality, we are now trying to pass a piece of legislation.

Mr. A. B. Salem *(Mattancheri)*: Am I to understand that these tolls on the public road which you mentioned in (*f*) are imposed without an Act or Regulation but only by consent and knowledge?

Mr. P. V. Raphael *(Joint Secretary to Government)*: That is by virtue of an Act. Here also we are trying to introduce an Act.

Mr. T. A. Ramachandra Ayyar *(Nellayi)*: Is it a fact that the Port Authorities impose a tax without any legal right and is the Government to legalise an illegal Act?

Mr. President: Government have already given their consent. It might require or might not require legislation.

Mr. K. Kochukunhan Kaimal *(Vadakkancheri)*: Do Government concede that the levy is an illegal one which has to be validated by a subsequent legislation?

Mr. President: No.

Mr. A. B. Salem *(Mattancheri)*: May I know whether it is the usual practice when such levies are imposed to publish them in the Cochin Government Gazette? Can the Hon'ble Joint Secretary point out one single instance where any tax has been imposed without publishing it in the Gazette?

Mr. P. V. Raphael *(Joint Secretary to Government)*: The activities of the Port are not published in our Gazette. But they have given the widest publicity possible to this levy.

Mr. A. B. Salem *(Mattancheri)*: May I know whether it was published in the Cochin Government Gazette that the Government has consented to this levy of 8 annas?

Mr. P. V. Raphael *(Joint Secretary to Government)*: Not in the Cochin Government Gazette. But the Port Authorities sent it to the local press, Chambers of Commerce, Municipalities, etc.

Mr. V. K. Bhaskara Menon *(Cranganur)*: May I know whether the people can as a matter of right go from Ernakulam to the Harbour Railway Station?

Mr. P. V. Raphael *(Joint Secretary to Government)*: They are allowed to go there.

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Mr. V. K. Bhaskara Menon *(Cranganur):* If they can go there as a matter of right, may I know how the Government call that particular area the private property of the Port Authorities? The Government are saying that a particular area belongs to the Port Authorities and at the same time they are saying that private persons can go there as a matter of right. We would like to have coherent answers to questions.

Mr. President: The difficulty is that you proceed on two assumptions which do not seem to be correct. In the first place, the area does not belong to the Port Authorities but the road belongs to them.

Mr. V. K. Bhaskara Menon *(Cranganur):* I only want to know whether the lands within the port area belong to the Port Authorities as a private party or otherwise. If the whole area belongs to the Port Authorities, then they will be perfectly right in saying that the road belongs to them. If it is otherwise, the lands belong to somebody else. Is that the case of the Government?

Mr. P. V. Raphael *(Joint Secretary to Government):* The lands all belong to the Port.

Mr. V. K. Bhaskara Menon *(Cranganur):* Then I want to know whether the Port Authorities can prevent anybody from going to the Harbour Terminus Station if they so wanted?

Mr. P. V. Raphael *(Joint Secretary to Government):* They do not prevent it. Only they ask motorists to give them something to maintain the road.

Mr. President: These are all abstract questions which may involve the discussion of about half a dozen principles of law.

Mr. A. B. Salem *(Mattancheri):* Was this road in existence before the sale of the land to the Port Authorities?

Mr. P. V. Raphael *(Joint Secretary to Government):* The roads were not there in the condition in which they are now being kept.

Mr. A. B. Salem *(Mattancheri):* When was the information that this 8 annas levy is to be imposed received by the Cochin Government?

Mr. P. V. Raphael *(Joint Secretary to Government):* I want notice.

Mr. Ismail Haji Essa Sait *(Mattancheri):* May I know whether the Government can consider the cancellation of this toll in future?

Mr. M. Sivarama Menon *(Advocate-General):* It is not a toll. It is only a levy.

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